

December 16, 2004

VIA Electronic Mail to [EnvJustice@calepa.ca.gov](mailto:EnvJustice@calepa.ca.gov)

Ms. Tam Dudoc  
CA Environmental Protection Agency  
1001 I St.  
Sacramento, CA 95814

**RE: WPHA Comments in the Development of Working Definitions within the Environmental Justice Action Plan and Pilot Projects.**

Dear Ms. Dudoc:

On behalf of the WPHA, I am submitting comments regarding working definitions for Cal-EPA's Environmental Justice Action Plan and proposed Environmental Justice Pilot Projects. We appreciate the opportunity to provide these comments and ask that you forward them to all appropriate staff within Cal-EPA. We will additionally be providing comments on the CA Department of Pesticide Regulations (CDPR) Pilot Program, and definitions on "multi-media cumulative impacts" and "precautionary approaches." We will forward those specific comments to the appropriate lead persons within those agencies.

### **Developing Definitions for Environmental Justice Programs**

At the recent Environmental Justice workshops held by Cal-EPA, the agency stated it was working to establish working definitions for "cumulative impacts", "multi-media cumulative impacts", and "precautionary approaches".

WPHA believes these definitions must be clearly defined, and should be established prior to the start of the pilot projects, so all parties; both businesses and communities understand what the parameters and scope of pilot projects. Defining these terms will take more than one round of comments, and the lead agencies responsible for developing these definitions should engage in ongoing discussions with all interested groups to finalize these definitions.

### **Cumulative Impacts**

We oppose the definition recommended by the Environmental Justice Advisory Committee that the definition for cumulative impact should be "the total burden of all emission and discharges in a geographical area."

Any definition should include language identifying the role of science and risk. To develop the definition for cumulative impact, which we believe is key in developing the guidelines for the pilot projects; we believe the definition for cumulative impact requires ongoing discussion.

Within a definition for “cumulative impacts” the following concepts should be incorporated.

- The definition should include language that requires the use of scientific principles.
- All cumulative impact data should undergo a science-based cumulative impact analysis.
- This analysis should be a peer-reviewed process.
- While the process should be transparent, any release of data during the pilot project should be accompanied by an analysis developed scientifically by the over-seeing agency.
- Upon completion of a cumulative impact analysis, any recommendations that include alternative actions should include the direct and indirect effects of the alternative action.

#### **Additional Comments on “Cumulative Impacts.”**

We support the right of the public to have an advisory role in the evaluation process and pilot projects. However, we believe that this role should be directed toward making sure that the overseeing agencies acknowledge issues of concern, that agencies maintain transparency in their decision making process, and that agencies provide clear explanations for their evaluations, and the parameters of the pilot projects.

The collection and evaluation of cumulative impact data should be conducted in a cost-effective manner. With limited resources available to agencies, it is important to utilize already existing data and scientifically sound analysis by agencies. Agencies should inventory research already available and utilize it in their evaluations.

#### **Multi-Media Cumulative Impacts**

WPHA supports a definition for “multi-media cumulative impacts” as “the adverse health risk posed by exposure to pollutants from multiple pollution sources.”

We support this definition for the following reasons.

- It is consistent with OEHHA’s guidance on health risk assessment, and includes the term “health risk”. This designates the role of risk assessment in the analysis process.
- The use of risk assessment allows for the use of objective and not subjective evaluation of data and exposure paths.

- The use of this scientific principle allows Cal-EPA to continue to require the parameters for the collection of data to be developed through a scientifically sound process.
- Cal-EPA should utilize peer-reviewed protocols in the analysis of multi-media cumulative impacts.
- It identifies multiple “pollution sources” without limiting or targeting sources within a project or the definition.
- It allows for consideration of the path of the exposures, without pre-depositing how a detection occurs.
- The use of science allows Cal-EPA to objectively prioritize its focus of work.

### **Additional Comments on “Multi-Media Cumulative Impacts”**

WPHA opposes the definition of multi-media cumulative impact” to include social factors. Suggestions that factors like health insurance, emotional stress, housing, and crime should be incorporated into a definition are inappropriate. Cal-EPA is not capable of either evaluating or remediating these types of issues. While these issues are of importance to communities, we do not believe that there is a peer-reviewed or scientific method to evaluate social injustices.

We believe that OEHHA’s guidance for risk-assessment already takes into account populations with the highest vulnerability. These are protocols that will utilize risk assessment and objective science in evaluations, and avoid speculative or arbitrary results.

Many factors that impact health risks are life style choices. Factors like alcohol consumption, drug use, smoking and fat consumption do impact community health. While these issues should be addressed, we do not believe this can be done through a cumulative impact analysis.

As with “cumulative impacts” we support the right of the public to have an advisory role when agencies are addressing this issue. Again, this role should be directed toward making sure that the overseeing agencies acknowledge issues of concern, that agencies maintain transparency in their decision making process, and provide clear explanations for the parameters of an evaluation process or the pilot projects to those concerned parties.

The collection and evaluation of multi-media cumulative impact data should be conducted in a cost-effective manner. With limited resources available to agencies, it is important to utilize already existing data and scientifically sound analysis by agencies. Agencies should inventory research already available and utilize it in their evaluations.

### **Precautionary Approaches**

WPHA supports the use of the term “precautionary approach or approaches” within the Environmental Justice Action Plan. This term should be clearly defined. WPHA

supports the definition developed by the “U.S. Commission on Ocean Policy” and refined by the “CA Council for Environmental & Economic Balance” that states:

“Precautionary approach” means the application of judicious and responsible decision making based on best available science and on the weighing of the level of scientific uncertainty and the potential risk of damage. A precautionary approach is based on the recognition that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm.

This definition supports the utilization of science-based assessments and decision making. While coming to a final definition for precautionary approach may require additional discussion, we believe this definition is a sound basis for a discussion. While we support this definition we believe the following guidelines should be implemented to assure that the Action Plan and Cal-EPA pilot projects are developed in a reasonable manner.

- Triggering an evaluation of a precautionary approach should be based on sound scientific evaluations.
- The criteria for triggering a precautionary approach evaluation should be clearly defined.
- Reasonable, cost effective approaches should be utilized in the development of precautionary approaches, and the evaluation of alternatives.
- The process should recognize that there is no such thing as “risk free.”
- An evaluation of a precautionary approach should be transparent.
- The use of a precautionary approach should include an cost-benefit analysis that identifies the secondary impacts of a decision. The impact on jobs and business climate

### **Pilot Projects**

We support Cal-EPA and its agencies commitment to interact with the public to address concerns about health impacts to concerned communities. We believe that Cal-EPA is trying to work toward developing a system that will allow for input by interested members of a community, yet follow sound scientific protocols in the process. However, we believe it would be remiss of WPHA not to suggest the following guidelines as the pilot projects are being developed. The following suggestions apply to all the pilot projects. Specific pilot project comments will be forwarded directly to those agencies in charge by WPHA staff.

We agree that in order for Cal-EPA to maintain trust by the public that the pilot projects are being conducted fairly, that there must be transparency in the process. However, we believe that as important as the public having access to pilot project information; the public must have information in an understandable and objective manner. ***All*** information shared with local advisory groups or the public should be provided with an objective, scientific analysis (that is understandable to all), and should be discussed with

advisory groups with a scope of reference or comparison, so those groups can understand what that information means in the real world.

One of the challenges of the pilot projects is that each project is only a replicate of one community, when California is made up of very diverse communities. We are very concerned about generalizations being made about communities in general based off of one pilot project. Again, we think it is vital that Cal-EPA interact with communities both before and after to make sure that communities avoid making these generalizations.

As these projects will only be one replicate, we believe that agencies must utilize other existing research in each pilot project area. The protocols developed in existing peer-reviewed research should be utilized as much as is appropriate, to create a model protocol to follow. Data developed through the pilot projects can be compared against the results of the existing research to help develop determine trends or impacts. We recognize that all agencies developing pilot projects are under fiscal restraints, and the use of already existing research projects may make the pilot projects more cost-effective.

As with any research, the protocols should be based on sound, science-based criteria. Subjective analysis must be avoided if agencies are committed to bringing truthful information about health impacts to those communities. Outcomes should be peer-reviewed to make sure that the analysis has been scientifically developed and objectively analyzed. Again, it will be the challenge of the agencies involved to develop and utilize these protocols and to communicate them to involved communities, in a manner that does not compromise the scientific data, but is clear and understandable to all interested parties.

There has also been discussion that when possible, multi-media cumulative impact analysis should be done. We agree that to develop a true understanding of how communities are impacted this should be done. We caution however, that agencies must not take a one-size fits all approach, and try to use the same “effect levels” for different paths of exposure. Each pathway, whether it is air, water, soil, or other means of exposure should have a specific scientifically established “effect level.” However, in some cases the science may not be developed to make a determination on what the effect level is in combination with other exposure pathways. If an agency intends to try to do multi-media cumulative impact analysis, it must clearly define its ability and limitations in this area, and not leave data open to question because of scientific limitations on analysis. This will be a challenge for agencies, but if agencies are going to address this issue, outcomes and analytical limitations must be fully and clearly explained to all interested parties.

### **Closing Comments**

WPHA applauds the success the Cal-EPA has had in improving environmental protection. We support Cal-EPA’s ongoing effort to fill gaps in environmental protection, and their awareness of the need to continue to address environmental issues both here in Sacramento and with communities that are concerned about these issues

impact them. We support the administrations ongoing effort to improve California's business climate while maintaining our leadership position in environmental protection.

We believe that it important that while Cal-EPA continues to address environmental justice issues that it maintains its awareness of the impact of regulations on the business climate. While we support the concept of precaution, businesses should not be put into a position of proving a negative, and that decisions are based on objective, science-based decisions, and not subjective or arbitrary decisions.

Clearly, environmental justice is a challenging and important issue. We appreciate Cal-EPA's leadership to address this issue, and will continue to work with you on addressing it. Thank you for your consideration of our comments. Please feel free to contact me with any questions you may have related to this letter.

Sincerely,

Renee Pinel  
Director of Policy & Legislation

Cc: The Honorable Terry Tamminen  
The Honorable James Branham  
Mr. Louie Brown